

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL MILAM,

Petitioner,

v.

PIERCE COUNTY "AS A PERSON",

Respondent.

Case No. C04-5672RBL

REPORT AND
RECOMMENDATION

**NOTED FOR:
APRIL 22nd 2005**

This Habeas Corpus Action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and Local Magistrates' Rules MJR 3 and MJR 4. Petitioner in this action is seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2254. At the time of filing petitioner was housed with the state department of corrections at Shelton Washington. Petitioner was ordered in January of 2005 to file an amended petition that named the person who had custody of him as a respondent. (Dkt. # 10). Petitioner has failed to comply with that order.

Accordingly the court now recommends **DISMISSAL WITHOUT PREJUDICE.**

DISCUSSION

Petitioner has been given over two months to file an amended petition that names a proper

1 respondent. Not having a proper respondent is fatal to this petition. As the court informed
2 petitioner in January of this year “[f]ailure to name the petitioner's custodian deprives federal courts
3 of personal jurisdiction.” Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994).

4 Petitioner has failed to amend and the court recommends that this petition be **DISMISSED**
5 **WITHOUT PREJUDICE**.

6 CONCLUSION

7 This petition should be **DISMISSED WITHOUT PREJUDICE**. A proposed order
8 accompanies this Report and Recommendation.

9 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the
10 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.
11 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of
12 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule
13 72(b), the clerk is directed to set the matter for consideration on **April 22nd, 2005**, as noted in
14 the caption.

15 DATED this 21st day of March, 2005.

17 s/ Karen L. Strombom
18 Karen L. Strombom
19 United States Magistrate Judge
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